

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
SPECIAL EXCEPTION AND VARIANCE		
Associated Catholic Charities, Inc	*	BOARD OF APPEALS
- <i>Legal Owner, Petitioner/Appellant</i>		
2829 Lodge Farm Road	*	OF
15 <sup>th</sup> Election District	*	BALTIMORE COUNTY
7th Councilmanic District		
	*	CASE NO.: 13-103-SPHXA

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals for Baltimore County (the "Board") as an Appeal from Administrative Law Judge's February 15, 2013 decision which granted a Petition for Special Hearing to approve the use of a former convent building as a boarding or rooming house and for issuance of a use permit and granted a request for variance relief: (1) To permit 6 parking spaces to be provided in lieu of the required 16 parking spaces; (2) To amend the prior relief in Case No. 92-80-XA to permit 6 of the 70 parking spaces approved for the adjacent senior housing facility to be used in conjunction with the proposed use; and (3) Pursuant to B.C. Z.R. sections 1B01.2.C.1.a and 307.1, to approve the existing front yard setbacks of 20 ft and 18 ft., respectively, in lieu of the required 40 ft. and 20 ft.

The ALJ dismissed, without prejudice, the Petition for Special Exception which was filed pursuant to 1B01.1.C.5 of the B.C.Z.R., to permit a community care center in the former convent building.

**HEARING**

The hearing was attended by Harry Wujek and Francis Taylor of the North Point Peninsula Civic Organization and Robert Zacherl, President of the School Board for St. Luke's Church, who testified against the petition in their individual and representative capacities.

Mary Ann O'Donnell, Director of Community Service for Associated Catholic Charities, Inc. ("ACC") Benton Berman, Program Coordinator of ACC, and Dale McArdle, Director of Housing Services for St. Luke Apartments testified in support of the petition. Ms. Mary Ann O'Donnell was the first witness. She described for the Board the program that will be implemented at the Hosanna House. Similar to other programs run by ACC, the Hosanna House will provide supportive housing to the homeless. The objective of the Hosanna House is to provide a stable living environment and to improve self esteem and health of its residents. She described the very stringent interview process to screen potential residents. HUD requirements demand that each resident must be certified as homeless and disabled. Most importantly, to address the concerns of the community, the Hosanna House will not accept residents convicted of violent crimes, sexual abuse or current drug users. In addition, there would also be a zero tolerance policy for any use of alcohol and drugs. The other concession made for the community is that only women over age 50 will be residents of Hosanna House. No children will live there.

Benton Berman also testified in support of the petition. He will be directly responsible for the oversight of Hosanna House, which will have between fourteen (14) to sixteen (16) female residents; all residents will undergo background checks. There will be a security system installed and residents will be made to volunteer in the community and be employed. Mr. Berman also testified that only one or two of the residents will have a car and the Hosanna House will have a van and provide a driver to all residents so they may get to their place of employment. Similar to other projects supervised by ACC, the premises will be monitored using current technology twenty four hours a day.

Dale McArdle, Director of Housing Services for St. Luke Apartments, a 125 Unit Complex for Low Income Seniors that shares a parking lot with Hosanna House, also testified in

favor of the petition. He testified that the Senior Apartments have been operating since 1995 and he welcomes the Hosanna House as a neighbor. He further testified that they have Seventy (70) parking spaces, of which only Thirty-Seven (37) residents have cars. He foresees no parking issues with the addition of the Hosanna House in that St. Luke's agreed to allow Hosanna House to use 33 parking spaces if needed. St. Luke's Apartments provides an access easement from St. Luke's property to Hosanna House.

David Martin was admitted as an expert in landscape architect, land planner and application of zoning regulations. Mr. Martin described the current lot as a 1.6 acre parcel, which is already improved and part of a larger complex which includes the St. Luke Church, St. Luke Senior Housing and the former pre-school. There will be minimal changes to the internal layout of the current improvements. Mr. Martin testified that the applicable zoning that best fits this project is that of a Boarding House. The Boarding House Regulations are found in 101.1 of BCZR.

Mr. Martin further testified that the project could also be considered a Community Residential Facility or a Community Care Center under the BCZR. He stated the analysis would be the same as found under Boarding House requirements and in his expert opinion would yield the same results. The final part of his testimony was to address the setback of the building, which was granted previous approval as a non-conforming use. The existing church contains no setback and the proposed project will have an Eighteen (18) foot setback. The building which will operate the Hosanna House was built in 1994. There are no plans to improve the exterior of the existing structure. He testified that the property is unique as it is an institutional campus and the facilities are inter-related with a connection to charitable programs of the Church. To require a Forty foot setback would create an undue hardship and practical difficulty as the existing

structure would need to be either moved or destroyed and rebuilt.

Kristopher Lindh-Payne, Director of Neighbor to Neighbor, Mary Gunning, Director of St. Jerome Headstart, Gary Quatmann, a resident of St. Luke Senior Apartments, Mary Chestnut of YWCA in Arbutus and Sherrie Watts, a resident of YWCA in Arbutus, all testified on behalf of the petition.

Francis Taylor of North Point Peninsula Council, Inc. was the first witness to testify against the petition. His primary concern was that the residents would be properly vetted and supervised. He further testified that in his opinion the project is not a Boarding House under BCZR, but should be considered an Assisted Living Project. There was no expert testimony provided by Appellant on this matter.

Harry Wujek was the second witness that opposed the project. He lives four (4) miles from the project and was concerned about parking and traffic problems. There was no expert testimony which supported his claim of traffic congestion or parking issues.

Robert Zacherl also testified against the petition. He is concerned that the project does not fit within the community because public transportation is inadequate and there are very few job opportunities for its residents.

### THE LAW

#### 1. Boarding House.

BCZR §101.1.A.2. provides in pertinent part:

#### BOARDING OR ROOMING HOUSE

##### A. A Building:

\* \* \* \*

2. Which is not the owner's domicile and which is occupied in its entirety, for compensation, by three or more individuals who are 18 years old or older and not related to each other by blood, marriage or adoption.

Section 408B of the BCZR specifies that Boarding or Rooming Houses are permitted in D.R. zones. Section 408B.1. provides the permitting procedure and regulations as follows:

§408B.1. Permit procedure; regulations.

Notwithstanding any provision in these regulations to the contrary, boarding or rooming houses are permitted in D.R. Zones, subject to the provisions of this section.

A. Upon application to the Department of Permits, Approvals and Inspections, the Director may issue a use permit for a boarding or rooming house under the following procedure:

\* \* \* \*

2. Notice and hearing.

\* \* \* \*

e. Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon:

- (1) Findings following the public hearing.
- (2) The character of the surrounding community and the anticipated impact of the proposed use on that community.
- (3) The manner in which the requirements of this section and Section 502.1 and other applicable requirements are met and any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the use will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of this section and Section 502.1 of these regulations.

Section 502.1 are the special exceptions standards and provide that:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;

- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

## 2. Community Residential Facility.

The Zoning Commissioner's Policy Manual has a provision for "Community Residential Facilities for Other Special Populations" and states that:

\* \* \* \*

D. A Special Hearing may also be held to determine whether a facility can be considered a

Family: Any number of individuals lawfully living together as a single house-keeping unity and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.

\* \* \* \*

E. Eligibility: For a Community Residential Facility to meet the definition of "family", the Zoning Commissioner must be satisfied that a sufficient number but not necessarily all of the following apply:

- i. A continuous and uninterrupted occupancy by residents;
- ii. The facility is used for treatment of residents only;
- iii. The residents must generally live and eat together as a family.

The term "family" is defined in BCZR, §101.1 as:

Any number of individuals lawfully living together as a single housekeeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.

## 3. Community Care Center.

A "Community Care Center" is also defined in BCZR, §101.1 as:

A small-scale facility, sponsored or operated by a private

charitable organization or by a public agency and licensed by the Maryland State Department of Health and Mental Hygiene or by the Maryland State Department of Social Services, for the housing, counseling, supervision or rehabilitation of alcoholics or drug abusers or of physically or mentally (including emotionally) handicapped or abused individuals who are not subject to incarceration or in need of hospitalization.

### DECISION

The Petitioner proposes to operate a facility deemed as “permanent supportive housing” for women with disabilities. Several representatives from ACC testified that this is not a traditional “homeless shelter”, as tenants will have a lease and make rental payments. The plan is that eventually the tenants will be able to move on to market rate housing in the community. Testimony supported that homelessness is an especially acute problem in eastern Baltimore County, and that there is a strong need for such housing.

Originally, the Petitioner proposed to provide housing for men. After concerns were raised by the community, the Petitioner agreed to provide single gender housing for women 50 years of age and older only. Even after this concession several members of the community attended the hearing and opposed the petition, citing concerns with the proposed facility being located too close to the St. Luke’s preschool. Community members expressed concern about the safety of their children, and they believed parents would remove their children from the preschool, threatening its viability. That issue is now moot as the preschool has relocated.

The petition seeks approval for the proposed facility under three theories: (1) as a “boarding house” under BCZR §101.1 and §408B.1; (2) as a Community Residential Facility for Other Special Populations pursuant to the Zoning Commissioner’s Policy Manual; and (3) as a Community Care Center under BCZR, §101.1.

Having reviewed the exhibits and the testimony, we believe the proposed facility is

properly characterized as a “boarding house”, under BCZR, §101.1. The Petitioner provided this Board with ample evidence that the proposed use constitutes a “boarding house”, which is a building occupied, “for compensation, by three or more individuals who are 18 years old or older and not related to each other by blood, marriage or adoption” B.C.Z.R. §101.1.” The Petitioner further provided evidence sufficient for issuance of a use permit for the boarding house B.C.Z.R. §408B by the testimony of Mr. Martin who provided the factual basis for each of the §502.1 factors for special exceptions.

Specifically, the testimony of Mr. Martin was that the proposed use would not be detrimental to the community as no new development would take place and the site conditions were appropriate for this use. As to the impact on roads, he testified that there are no alleys, no impact on traffic through intersections and parking on-site is minimal based on the 6 spaces needed. There is no potential hazard from fire or safety issues. The Baltimore County Fire Department reviewed the plans and required closing off the door between the former school and the facility. There was no impact on population as this is a small building with 14 residents on 1.6 acres and the use is similar to previous uses. The remaining portion of the site is wooded.

There is no impact on schools because the residents are not permitted to have children live at the facility. There is no impact on adequate light or air as it is a 2 story building with a small footprint which does not block the view or air circulation of any other building around it. The use is consistent with the DR 5.5 zoning classification as it will function as a single family home which permits this use by right. Because there is no new development, there is no new impact on impermeable surfaces and no impact on the environment as this use will function like previous uses of the building.

Mr. Martin clearly articulated that this facility would constitute a boarding house. He



testified that the structure was a single family dwelling that functioned as a boarding house, where communal kitchen and bathroom facilities are provided for the residents, each of whom would reside in separate bedrooms. This was the same floor plan and layout used by the assisted living facility which occupied this building from 1994 through 2011, at which point the building became vacant. Mr. Martin also testified that the building is served by a single water meter, which he indicated was further evidence the structure was operated and oriented as a single family dwelling. Mr. Martin further opined that the use would in no way be detrimental to the safety and welfare of the community.

We are very respectful of the community's concerns, however, we believe the Petitioner has addressed the communities concerns by restricting occupancy to women aged 50 and over. Also, we found especially convincing the testimony of Mr. Berman, who operates on behalf of Petitioner the Holden Hall facility in Baltimore City, a similar facility as Hosanna House. Mr. Berman testified about the stringent tenant selection procedures used by Petitioner, and noted that no problems have been experienced at Holden Hall. In fact, Mr. Berman stated that the Holden Hall facility, which is occupied by men only, is immediately adjacent to the Head Start program with over 100 children enrolled, and that the uses have peacefully and cooperatively coexisted for several years.

After considering all the testimony, we do not believe that the proposed Hosanna House facility would be detrimental to the health, safety or general welfare of the community, and would satisfy the requirements set forth in B.C.Z.R. 502.1, as articulated in *People's Counsel v. Loyola*, 406 Md. 54 (2008).

While we have found that the proposed use meets the definition of "boarding house", we believe it is appropriate to address the Petitioner's alternative use theories. With regard to the

Petitioner's request that the proposed use be approved as a "Community Residential Facility" for Other Special Populations" under the Zoning Commissioner's Policy Manual and specifically that the women residing at Hosanna House can be considered a "family" as that term is defined in BCZR, §101.1, we do not agree.

Based on the evidence presented, the residents will not be "living together as a single house-keeping unit..." While there may be one kitchen for the residents to share, they have separate individual bedrooms – much like an apartment with a toilet or kitchen. The residents will come and go from the facility for the purpose of employment or volunteer work and therefore by design, would not be operating as a family house-keeping unit. There was no requirement in this proposal for the residents to live and eat together as a "family" as that term is defined in the Zoning Commissioner's Policy Manual, §2.E iii. Further, we did not find evidence that the facility would be used solely for the purpose of "treatment of residents" as required by Zoning Commissioner Policy Manual, §2.E ii but rather as supportive housing. Accordingly, the facility is not eligible to be considered a Community Residential Facility.

Finally, the Petitioner contends that the proposed use could also be approved as a "Community Care Center" under BCZR, §101.1. We do not find, based on the evidence, that the proposed use meets this definition because, as testified to by Mr. Martin, although a Community Care Center is permitted by special exception in a DR 5.5 zone, it is not licensed by the State of Maryland. As a result, this theory has not been met.

Based on evidence and testimony, we also find that the variance relief for both setbacks and parking can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v Ward*, 102 Md. App. 691 (1995). The property has irregular dimensions, and contains an older, 2-story building that has historically been used for

communal living, first as a convent and then as an assisted living facility. These factors make the property unique. Petitioner would experience practical difficulty if relief were denied, given it would be unable to establish the Hosanna House operation and serve a vulnerable group of County residents. The Variance relief requested is modest (i.e., approving existing building setbacks and permitting a reduction in the number of required parking spaces) and will not have a detrimental impact upon the community.

**ORDER**

**THEREFORE, IT IS ORDERED THIS** 25<sup>th</sup> day of September, 2013, by the Board of Appeals of Baltimore County, that Petitioner's request pursuant to 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve the former convent building as a boarding or rooming house, and for issuance of a use permit under B.C.Z.R. §408 B, be and his hereby **GRANTED** which shall be restricted to women ages 50 and older who qualify; and

**IT IS FURTHER ORDERED** that Petitioner's request for Special Hearing to approve the use as "Community Residential Facility for Other Special Populations" such that the facility meets the definition of "family" under the Zoning Commissioner's Policy Manual is hereby **DENIED**; and

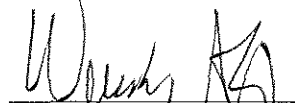
**IT IS FURTHER ORDERED** that Petitioner's request for Special Exception filed pursuant to 1B01.1.C.5. of the B.C.Z.R., to permit a community care center in the former convent building, be and is hereby **DENIED**; and

**IT IS FURTHER ORDERED** that Petitioner's request for Variance relief: (1) To permit 6 parking spaces to be provided in lieu of the required 16 parking spaces; (2) To amend the prior relief in Case No. 92-80-XA to permit 6 of the 70 parking spaces approved for the adjacent senior housing facility to be used in conjunction with the proposed use; and (3) pursuant

to sections 1B01.2.C.1.and 307.1, to approve the existing front yard setbacks of 20 ft. and 18 ft., respectively, in lieu of the required 40 ft. and 20 ft., be and is hereby **GRANTED**.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Maureen E. Murphy, Chairperson

  
Wendy A. Zerwitz

  
David L. Thurston



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

September 25, 2013

Patricia Malone, Esquire
Venable, LLP
210 W. Pennsylvania Ave, Ste 500
Towson, MD 21204

RE: In the Matter of: Associated Catholic Charities, Inc - Legal Owner
Case No.: 13-103-SPHXA

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules, WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington (handwritten signature)

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure

- c: Associated Catholic Charities, Inc./William J. McCarthy, Jr, Executive
North Point Peninsula Council, Inc./by Harry Wujek, Jr., President
Harry Wujek, Jr., Individually
Albert Walsh
Brenda Wilson
Sister Irene Pryle, SSND
Tricia Isenoch
Reverend Kristofer Lindh-Payne
Benton Berman
Francis H. Taylor
Victor and Valerie Appolonia
Gil Ziemski
Brian and Kimberly Sanner
Stu Hancock
Terri Kingeter
Dale McArdle
Justin Kirkpatrick
Robert Zacherl
Reverend Austin Murphy
Rosemary Olserholtzer
Fred Weiniert
Christine Kay
David Martin
Office of People's Counsel
John E. Beverungen, Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney